




COMMENTS ON TAX LAWS (SECOND AMENDMENT) ORDINANCE, 2019

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Prologue

A document is circulating today on social media as '**Tax Laws (Second Amendment) Ordinance, 2019**' ("**Ordinance**") promulgated by President to amend certain provisions of Federal tax laws with immediate effect. We are pleased to submit our comments on the effect of the abovementioned Ordinance, in respect of Income Tax and Sales Tax Laws in Pakistan.

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This document is circulated electronically free of cost for general public to create tax awareness in the country.

The readers are advised to consult the actual text of the Ordinance while interpreting the specific provisions and to consult our tax department for clear advice on specific issues.

Readers are requested to visit our website www.tolaassociates.com or download our mobile apps from the links mentioned below to access our published monthly issues on tax laws and economics, such as TAXPAK and PAKONOMICS. A detailed analysis of the balance of trade of Pakistan in the form of our monthly issue name TRADE PAK. This will also allow our readers to stay updated of future notifications. The links are as follows:

1. <https://goo.gl/QDM4ZM> (iOS)
2. <https://goo.gl/LFiWyx> (Android)

Tola Associates

Tuesday, December 31, 2019

Amendments in Income Tax Ordinance, 2001

1. Appellate Tribunal

Section 130 of the Income Tax Ordinance 2001 (hereafter "ITO") provides for the establishment of the Appellate Tribunal. The Ordinance has substituted the section, making the following changes:

- i. The Prime Minister ("PM") was earlier authorized to prescribe the rules for establishment and functioning of the Appellate Tribunal. These rules have been made effective, notwithstanding anything contained in section 237, wherein, the Board has been authorized to make the rules. Succinctly put, the Appellate Tribunal has been brought directly under the directions of the PM.
- ii. Conditions to be fulfilled by a person to be appointed as a Judicial Member have been amended as under:

S#	Previous condition	Current Condition
1	Qualified to be a Judge of High Court	Has been a Judge of the High Court
2	Has exercised the power of a District Judge	Is or has been a District Judge
3	Is or has been an Advocate of the High Court, and is qualified to be a Judge of the High Court	Is an advocate of a High Court having a standing of not less than ten years
4	N/A	Possesses other qualification as may be prescribed by PM

- iii. Conditions to be fulfilled by a person to be appointed as an Accountant Member are unchanged.
- iv. Earlier, the Federal Government was empowered to appoint a Member as a Chairperson. This particular power has been omitted by the Ordinance.
- v. Several other provisions, with respect to the constitution and functioning of benches have also been omitted.

- vi. Existing rules with respect to the Appellate Tribunal have been rendered effective unless amended or repealed. On the other hand, with respect to provisions which have been omitted, it has not been clarified as to how the benches will be constituted, and function until further rules are prescribed.

2. Capital Gain on Investment by Non-resident company through SCRA

- The Ordinance has added a new subsection (1D) in **Section 152**, whereby, every banking company is directed to deduct tax @ 10% on capital gains, earned by a non-resident Company, having no permanent establishment in Pakistan, arising on disposal of debt instruments and government securities including T-Bills and PIBs through Special Convertible Rupee Account ('SCRA').
- Such deduction has been excluded from application of 10th Schedule i.e. tax deduction will not be at double rates even if the payee is not on Active Taxpayers' List.
- The tax so deducted shall be a **final tax** on the income of the non-resident company.
- **Section 147(5B)** provides for quarterly advance tax to be deposited on capital gains. The above Capital gains have also been exempted from application of Section 147(5B).
- A non-resident Company, having no permanent establishment in Pakistan, has also been exempted from application of section 236P (advance tax on banking transactions) with respect to its SCRA account.

- Such companies are also not required to file statement of final taxation under section 115(4) solely due to reason of capital gains or profit on debt earned from such investments.
- Such companies have also been relieved from Registration requirements under section 181.

3. Business License

Through the Finance Act 2019, every person engaged in any business, profession or vocation was required to obtain a business license. The Ordinance has now prescribed penalties amounting to Rs. 25,000 for persons deriving taxable income and Rs. 5,000 for other cases, in case of failure to obtain a license. The Commissioner has also been authorized to cancel a business license after providing an opportunity of being heard.

4. Disclosure of Information to the Financial Monitoring Unit

Section 216 of ITO states that all information entrusted to public servants shall be confidential. However, subsection (3) provides certain instances wherein, or persons to whom disclosure of the information may be made. The Ordinance has added a subclause (s) to subsection (3), whereby, disclosure of information, to the Financial Monitoring Unit for the purpose of performing functions as laid down in the Anti-Money Laundering Act, 2010, has been allowed.

5. Directorate General of international tax operations (“DGITO”)

Section 230E provides for constitution, functioning and powers of DGITO. Clause (d) of subsection (3) prescribes power of DGITO to conduct transfer pricing audit in cases selected for such audit by DGITO.

The Ordinance further provides that transfer pricing audit of such selected cases shall be conducted as per the procedures given in section

177 and all the provisions of ITO shall apply except following:

- Commissioner will not be empowered to call for books and accounts;
- Commissioner will not be empowered to amend the assessment after issuance of audit report; and
- Commissioner will not be empowered to make best judgement assessment.

6. Independent Power Producers

Vide Finance Act 2019, while prescribing rates of dividend paid by Independent Power Producers, the word ‘producer’ was mistakenly published as ‘purchaser’. We highlighted this mistake in our publication including comments on Finance Act 2019, and also raised this issue, amongst other things, on various occasions. This mistake has now been rectified.

7. Advance tax on import of mobile phones

The rate of advance tax on import of mobile phone valuing USD 30 to USD 100 has been decreased from Rs. 730 to Rs. 100. Other categories have not been amended.

8. Dividend Income of Group Companies

Clause (103C) of Part I of Second Schedule to ITI was inserted vide Finance Supplementary (Second Amendment) Act, 2019 with effective from July 1, 2019. The clause provided exemption to dividend income derived by a company, if the recipient of the dividend is eligible for group relief. The exemption to dividend was provided in proportion of shareholding by the parent in the subsidiary company. The ordinance has now exempted 100% of the dividend received by parent from subsidiary irrespective of its shareholding in the subsidiary.

9. Reliefs to Traders

The Ordinance has provided a number of reliefs to the traders amid growing concerns of the

traders since Finance Act, 2019. 'Traders' has been defined as **an individual engaged in business of buying and selling of goods in the state including a retailer and a wholesaler but excluding a distributor**. The following reliefs have been provided to traders;

- Minimum tax rate under **Section 113** of ITO has been reduced to 0.5% of turnover for the tax year 2020 where turnover does not exceed Rs. 100 million. However, for traders who have filed return of income for tax year 2018, the tax liability for tax years 2019 and 2020 shall not be less than tax paid for tax year 2018.
- Minimum tax rate under **Section 113** of ITO for an individual trader of yarn shall be 0.5% for the Tax year 2020.
- Rate of deduction under section 153(1) (a) and (b) has been prescribed @ 0.5%. Earlier this rate was 0% subject to payment of 0.1% on their annual turnover on monthly basis.
- Individual traders having turnover upto Rs. 100 million shall not be withholding agents for the purpose of section 153.

10. Capital Gain on Immovable Property

Clause (9A) of Part III of Second Schedule provides a 50% exemption on capital gain derived on first sale of immovable property acquired or allotted to ex-servicemen and serving personnel of Armed forces or ex-employees or serving personnel of Federal and Provincial Governments, being original allottees of immovable property. The Ordinance has further exempted capital gains upto 75% in case the property is sold after completion of three years from date of acquisition.

11. Withholding tax on zero rated sector

- A. **Clause (45A) of Part IV of Second Schedule** provides that the rate of deduction under **Section 153(1)(a) and (b)** shall be 1%, in case

of local supplies made and services rendered to the taxpayers falling, in the following categories:

- i. Textiles and articles thereof;
- ii. Carpets;
- iii. Leather and articles thereof including artificial leather footwear;
- iv. Surgical goods; and
- v. Sports goods

The above benefit was only available to the taxpayers registered on or before June 30th, 2011. This condition of registration on or before June 30th, 2011 has been omitted. This means taxpayers falling in above categories, whenever registered, will be eligible for the benefit under clause 45A.

- B. **Clause (66)** provides exemption from **Section 235** (Advance Tax on Electricity Consumption) to taxpayers falling under sales tax zero rated regime registered under any of the five export sectors. Consequent to the withdrawal of SRO 1125(I)/2011, certain electricity distribution corporations started levying advance taxes under **Section 235** in the bills of five export sectors. Owing to these hardships being faced by taxpayers, the Ordinance has removed the reference to 'zero rated regime of sales tax' to end the ambiguity.

12. Exemption from advance tax under section 148

Clause (72B) provides the manner and conditions to be fulfilled to avail exemption from application of advance tax at the time of import under **Section 148**. The Ordinance further provides that any application on IRIS for automatic processing of Exemption certificate shall be deemed to be approved upon expiry of the prescribed time period. The Commissioner has also been empowered to modify or cancel the automatically issued certificate on the basis

of reasons to be recorded in writing after providing an opportunity of being heard.

Amendments in Sales Tax Act (“STA”)

1. Definition of Greenfield Industry

Section 2(12A)

Through the Finance Supplementary (Second Amendment) Act, 2019 a new entry, bearing No. 150 was added in **Table-1 of Sixth Schedule**, whereby, plant and machinery under Chapter 84 and 85 (excluding consumer goods and office equipment) as imported by green field industries, intending to manufacturer taxable goods during their construction and installation period were given exemption from chargeability of Sales Tax at import stage. This exemption is subject to the conditions that the importer is registered under the Sales Tax Act on or after the 1st July 2019, and the industry is not established by splitting up or reconstruction or reconstitution of an undertaking already in existence or by transfer of machinery or plant from another industrial undertaking in Pakistan.

Now, through the Ordinance, the term ‘green field industry’ has been defined to have clarity in availing an exemption in the pertinent entry, and further conditions have been added. The green field industry means a new industrial undertaking having the following characteristics:

- Setup on land which has not previously been utilized for any commercial, industrial or manufacturing activity, and is free from constraints imposed through any prior work;
- Which is built without demolishing, revamping, renovating, upgrading, remodeling or modifying any existing structure, facility, or plant;
- That has not been formed by splitting up or reconstitution of an undertaking already in existence or by transfer of

machinery, plant or building from an undertaking established in Pakistan prior to commencement of the new business and is not part of an expansion project.

- Using any process or technology that has not earlier been used in Pakistan and is so approved by the Engineering Development Board
- It must be approved by the Commissioner

2. Amendment in definition of Term ‘Tier-1 Retailer’

The retailers falling in the Tier-1 category, are subject to all the requirements of Act, relating to registration, charge of sales tax, filling of monthly return, input tax adjustment/apportionment, debit/credit note, audit etc. The retailer shall be considered as a ‘Tier-1 retailer’ if he falls within the ambit of the 5 categories mentioned in **Section 2(43A) of Act**. However, there was ambiguity as to whether the retailer is required to fall in one category or all the categories to be considered as Tier-1. Now, by virtue of an amendment through the Ordinance, it has been clarified that if a registered person falls in any one category it will be considered as a Tier-1 retailer.

In addition to the above, the minimum limit for a cumulative electricity bill for the last 12 months for retailer to be classified as Tier-1 has also been increased from Rs 600,000 to Rs 1,200,000. Other than the 5 categories mentioned above, FBR has now also been empowered to prescribe any other person or class of person to be considered a Tier-1 Retailer.

3. Goods supplied from Tax exempt areas (Azad Jammu and Kashmir, Gilgit Baltistan, Tribal Areas and other specified areas) - Section 40D

To avoid revenue leakages and misuse of exemption, **Section 40D** has been **added** in Act wherein provisions/control measures relating to goods supplied from tax exempt areas to tariff areas have been provided as follows:

- the conveyance carrying goods as above shall have documents as prescribed in the Rules by the FBR,
- The Regional Tax Offices (“RTO”) may establish check-posts to examine such supplies and documents through its officers, being not below the rank of an inspector;
- In absence of such documents, the goods along vehicles can be seized by such officer. A show cause notice to owner of such goods for penalty imposition shall be issued within 15 days of seizure

4. Payment through Banking Channel
Section 73

As per Section 73 of STA, payment for a transaction exceeding value of Rs 50,000 other than utility bills must be made through banking channel within the prescribed time to allow for an input tax credit, zero rating etc.

Now through the Ordinance, a **new subsection 4** has been inserted, wherein additional requirements in case of supplies made by a registered manufacturer (hereafter “RM”) have been added. Now if taxable supplies to a single person (buyer) by RM, exceeds Rs. 10 Million in a month, or Rs. 100 Million in a financial year, the buyer should be a **sales tax registered person** otherwise RM will not be entitled to an input

tax credit adjustment attributable to such supplies.

5. Fee Service and charges
Section 76

Through Finance Act 2019 (hereafter “FA 2019”), a new section was added whereby Federal Government (i.e. Federal Cabinet) was authorized to prescribe fees and service charges for valuation. Now, by virtue of an amendment through the Ordinance, FBR with approval of Federal -Minister-charge has been empowered, instead of Federal Government to exercise such powers.

6. Amendment in the Twelfth Schedule

Through FA 2019, the 12th Schedule was added in the STA, in order to levy a 3% value addition sales tax on all imported goods. However, some items listed in clause (2) in this schedule were excluded from the preview of minimum value addition tax. The Ordinance has now added plant and machinery, and equipment falling in Chapter 84 and 85 of First Schedule to the Customs Act, 1969(IV of 1969), as are imported by a manufacturer for in-house installation or use, to the exclusion list. This will make chargeability of minimum value addition tax on the capital goods rationalized with raw material and intermediary goods meant for use in industrial process which are already excluded from minimum value addition tax

As per **clause (4) of Schedule** there will be no refund of excess input tax paid over output tax, which is attributable to tax paid at import stage. Now, by virtue of an amendment through the Ordinance in case of import is used in zero rated supplies, the excess will be refunded.

7. Amendment in the Tenth Schedule

Before Ordinance	After Ordinance
The tax on bricks, falling in PCT heading 6901.1000, shall be paid on fixed basis, on monthly return, at the rates specified in the Table.....	The tax on bricks, falling in PCT heading 6901.0000 shall be paid on fixed basis, at the rates specified in the Table.....

8. New Penalties and Offence - Section 33

New penalties for the following offences have been **added** in **Section 33** of Act

Offences	Penalties	Section of the Act to which offence has reference
24. Any person, who is integrated for monitoring, tracking, reporting or recording of sales, production and similar business transactions with the Board or its computerized system, conducts such transactions in a manner so as to avoid monitoring, tracking reporting or recording of such transactions, or issues an invoice which does not carry the prescribed invoice number or barcode or bears duplicate invoice number or counterfeit barcode, or any person who abets commissioning of such offence	Such person shall pay a penalty of five hundred thousand rupees or two hundred per cent of the amount of tax involved, whichever is higher. He shall, further be liable, upon conviction by a Special Judge, to simple imprisonment for a term which may extend to two million rupees, or with both. Any person who abets commissioning of such offence, shall be liable, upon conviction by a Special Judge, to simple imprisonment for a term which may extend to one year, or with additional fine which may extend to two hundred thousand rupees or with both	Sub-section (9A) of Section 3 and section 40C.
25. Any person, who is required to integrate his business for monitoring, tracking, reporting or recording of sales, production and similar business transactions with the board or computerized system, fails to get himself registered under the Act, and if registered, fails to integrate in the manner as required under law	Such person shall be liable to pay a penalty up to one million rupees, and if continues to commit the same offence after a period of six months after imposition of penalty as aforesaid, his business premises shall be sealed and an embargo shall be placed on his sales.	Sub-section (9A) of section 3 and section 40C
26. Any person, being a manufacturer, or importer of an item which is subject to tax on the basis of retail price, who fails to print the retail price in the manner as stipulated under the Act	Such person shall pay a penalty of ten thousand rupees or five per cent of the amount of tax involved, whichever is higher: Further, such goods shall also be liable to confiscation. However, the adjudication authority, after such confiscation, may allow redemption of such goods on payment of fine which shall not be less than twenty percent of the total retail price of such goods.	Sub-section (27) of section 2 and clause (a) of sub-section (2) of section 3
27. Any person, being owner of the goods, which are brought to Pakistan in violation of section 40D.	Such person shall pay a penalty of ten thousand rupees or five per cent of the	Section 40D

	<p>amount of tax involved, whichever is higher:</p> <p>Further, such goods shall also be liable to confiscation. However, the adjudication authority, after such confiscation, may allow redemption of such goods on payment of fine which shall not be less than twenty percent of value, or retail price in case of items falling in the Third Schedule, of such goods.</p>	
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9. Amendment in the Sixth Schedule

Entry	Before Ordinance	After Ordinance
24	<p>Edible oils and vegetable ghee, including cooking oil, on which Federal Excise Duty is charged, levied and collected by a registered manufacturer or importer as if it were a tax payable under section 3 of the Act.</p> <p>Explanation– Exemption of this entry shall not be available to distributors, wholesalers or retailers.</p>	<p>Edible oils and vegetable ghee, including cooking oil, on which Federal Excise Duty is charged, levied and collected by a registered manufacturer or importer as if it were a tax payable under section 3 of the Act.</p> <p>Explanation– Exemption of this entry shall not be available to on local supplies made by importers, distributors, wholesalers or retailers.</p>
82	Frozen, prepared or preserved sausages and similar products of poultry meat or meat offal	Frozen, prepared or preserved sausages and similar products of poultry meat or meat offal, excluding those sold in retail packing under a brand name or trade mark.
83	Meat and similar products of prepared frozen or preserved meat or meat offal of all types including poultry meat and fish	Meat and similar products of prepared frozen or preserved meat or meat offal of all types including poultry meat and fish, excluding those sold in retail packing under a brand name or trade mark.

10. Amendment in the Eight Schedule

Entry	Before Ordinance	After Ordinance
5	Raw cotton and ginned cotton On import 5%	Raw cotton and ginned cotton On import 10%
68	Frozen prepared or preserved sausages and similar products of poultry meat or meat offal	Frozen prepared or preserved sausages and similar products of poultry meat or meat offal If sold in retail packing under a brand name or trade mark.
69	Meat and similar products of prepared frozen or preserved meat or meat offal of all types including poultry, meat and fish	Meat and similar products of prepared frozen or preserved meat or meat offal of all types including poultry, meat and fish. If sold in retail packing under a brand name or trade mark.

11. Amendment in the Ninth Schedule

Entry	Before Ordinance	After Ordinance
2	<p>Cellular mobile phones or satellite phones to be charged on the basis of import value per set, or equivalent value in rupees in case of supply by the manufacturer, at the rate as indicated against each category:</p> <p>a. Not exceeding US\$ 30</p> <p>Sales tax on import or local supply= Rs 135</p> <p>Sales tax (chargeable at the time of registration of IMEI number by CMOs) = Rs 135</p> <p>A. Exceeding US\$ 30 but not exceeding US\$ 100</p> <p>Sales tax on import or local supply= Rs 1320</p> <p>Sales tax (chargeable at the time of registration of IMEI number by CMOs) = Rs 1320</p>	<p>Cellular mobile phones or satellite phones to be charged on the basis of import value per set, or equivalent value in rupees in case of supply by the manufacturer, at the rate as indicated against each category:</p> <p>a. Not exceeding US\$ 30</p> <p>Sales tax on import or local supply = Rs 130</p> <p>Sales tax (chargeable at the time of registration of IMEI number by CMOs) = Rs. 130</p> <p>A. Exceeding US\$ 30 but not exceeding US\$ 100</p> <p>Sales tax on import or local supply= Rs 1320200</p> <p>Sales tax (chargeable at the time of registration of IMEI number by CMOs) = Rs 1320200</p>



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